



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 33311070

Date: OCT. 4, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner is a journalist who seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had a major, internationally recognized award, nor did she demonstrate that she met at least three of the ten regulatory criteria. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-step analysis. In the first step, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then move to the second step to consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010) (discussing a two-step review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). Before the Director, the Petitioner claimed she met six of the regulatory criteria. The Director decided that the Petitioner satisfied two of the criteria relating to published material and judging but that she had not satisfied the criteria associated with prizes or awards, original contributions, display of the Petitioner’s work, or her performance in a leading or critical role. On appeal, the Petitioner maintains that she meets each of the evidentiary criteria the Director declined to grant. After reviewing all the evidence in the record, we agree with the Director’s analysis on the criteria they granted, but other regulatory requirements require further review.

Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner initially claimed two awards. The Director issued a request for evidence (RFE) relating to both awards and the Petitioner responded with additional evidence addressing the [REDACTED] International Award. The Director’s decision did not address the additional claims or evidence but indicated that she offered no new evidence in response to the RFE and determined the Petitioner did not satisfy this criterion’s requirements.

On remand, the Director should evaluate all evidence related to the Beneficiary’s awards to determine whether she had received an award that meets the requirements of 8 C.F.R. § 204.5(h)(3)(i) at the time she filed the petition in November 2022.

Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner provided several articles and the Director determined that the Petitioner met the requirements of this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

The Petitioner provided two instances of judging the work of others and the Director decided she met the requirements of this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner provided evidence she launched the digital version of a lifestyle and women's magazine that has reached beyond the borders of her home country. The Director discussed this initiative in the RFE and the Petitioner responded with additional claims explaining how this effort satisfies this criterion's requirements. The Director's decision did not address the additional claims and only indicated that she offered no new evidence in response to the RFE and determined the Petitioner's evidence was not adequate.

On remand, the Director should evaluate all claims and evidence under this requirement to determine whether those contributions rise to the level of major significance in her field.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

The Petitioner claimed her work was on display for public audiences at live journalism events and on podcasts. The Director correctly determined that the Petitioner did not meet the requirements of this criterion as she did "not demonstrate that any of her work product was on display at artistic exhibitions or [artistic] showcases." An October 2, 2024 USCIS Policy Manual update clarified that "[w]hile the dictionary definition includes public showings other than those that are artistic in nature, the plain language of the criterion includes the modifier 'artistic' and explicitly requires that the exhibitions or showcases be artistic in nature. USCIS only considers non-artistic exhibitions or showcases as part of a properly supported claim of comparable evidence" See generally 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policymanual>. It appears the Director properly applied agency policy and the Petitioner did not advance a comparable evidence claim here.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner's claims under this criterion relate to her service as editorial manager for a lifestyle and women's magazine. The Director determined that the Petitioner did not meet the requirements of this criterion. The Director noted the evidence in the record did not describe the Petitioner's duties for the publication to show her role was leading for the organization, and further decided a lack of material showing how the Petitioner's performance in her role was critical to the publication's success. Although the Director concluded that *El Nacional* (the newspaper within which the publication was

launched) is an organization with a distinguished reputation, they indicated the lifestyle and women's magazine did not enjoy such a reputation.

On appeal, the Petitioner asserts that the lifestyle and women's magazine is distinguished by "virtue of its publishing its contents under the umbrella of the nationally recognized publication *El Nacional*" which the Director conceded enjoyed a distinguished reputation. We do not agree that the subordinate magazine may impute its reputation from the parent newspaper, and instead the Petitioner must show the magazine itself enjoys that distinguished status on its own right. Otherwise, it would be necessary for the Petitioner to prove that she performed in a leading or critical role for *El Nacional*.

That is not to say that we conclude the record lacks any evidence relating to the lifestyle and women's magazine's own reputation that it appears the Director may not have considered. The RFE response noted evidence reflecting it was Venezuela's first ever publication that was licensed for use in at least 10 other countries, as well as other material described in the RFE response that directly related to the lifestyle and women's magazine's reputation. The Petitioner's RFE response also contained additional claims and evidence regarding her leading or critical role for the magazine, but it is not apparent from the decision that the Director fully considered that content.

On remand, the Director should evaluate all evidence related to the Beneficiary's claims under this criterion to determine whether the Petitioner has fulfilled her requirements.

III. CONCLUSION

As we discuss above, the denial decision did not include all of the required types of analysis and we will remand the matter for a new decision. On remand, if the Director deems it necessary, they may issue a new RFE prior to issuing a final decision. Should the Director conclude that the Petitioner meets at least three of the evidentiary criteria, the new decision should include a final merits analysis of the totality of the record evaluating whether the Petitioner has demonstrated sustained national or international acclaim and received recognition for achievements in her field, identifying her as one of that small percentage who has risen to the very top of the field, and that her achievements have been recognized in the field through extensive documentation. Within any final merits determination, the Director should also consider any potentially relevant evidence in the record, even if it does not fit one of the initial evidentiary criteria or was not presented as comparable evidence. *Id.* at F.2(B)(2). The petition's approval or denial depends on the evidence's type and quality. *Id.*

ORDER: The Director's decision is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.